

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
V.)	Crim. No. 01-455-A
)	Hon. Leonie M. Brinkema
ZACARIAS MOUSSAOUI)	

**GOVERNMENT’S RESPONSE TO PLEADING FILED BY CHARLES FREEMAN
ENTITLED: “IS THIS HOW ALEXANDRIA DIVISION TREATS ITS GUESTS”**

The United States feels compelled to answer the above-styled pleading filed by Texas attorney Charles Freeman, in which he asks why he can no longer serve as the legal advisor of defendant Moussaoui without entering his appearance. The answer to Mr. Freeman’s question lies in Local Rule 83(D), which allows attorneys from other jurisdictions, such as Mr. Freeman, to practice before this Court by filing a motion to enter their appearance *pro hac vice*. As Mr. Freeman notes, he was allowed to meet with defendant Moussaoui on several occasions for the explicit purpose of determining whether Mr. Freeman would represent defendant Moussaoui. Apparently, Mr. Freeman has decided not to enter his appearance. Indeed, on multiple occasions within his motion, Mr. Freeman explicitly states that he is not willing to enter his appearance.¹ Hence, he cannot represent the defendant.

The United States wishes to make clear it does not oppose, without knowing more, the formal appearance by any counsel in good standing who wishes to enter a formal and proper

¹ See Freeman Motion at 1, fn. 1 (“I am not, by filing this pleading, entering any appearance at all in the above-entitled and -numbered capital prosecution.”), 5 at fn. 8 (“This request should not be construed by anyone as an appearance before this Honorable Court because it is not.”).

appearance in this case. Moreover, to the extent such an attorney consents to a standard background investigation and after such an inquiry is properly cleared to review the discovery materials in this case, including classified documents, such an attorney could serve in any capacity the *pro se* defendant wishes. However, the Local Rules impose uniform requirements on all who wish to provide legal services in cases before this Court. The United States did not promulgate these rules and these rules were not created just for this case. But, these rules serve the valuable purpose of protecting the integrity and quality of the practice of law in this Court.

Cf. Bedrosian v. Mintz, 518 F.2d 396, 401 (2d Cir. 1975) (“The State of New York has a legitimate interest in developing a pool of competent attorneys to represent indigents who appear before its courts Equally important is the state interest in providing indigents with counsel who are familiar with the laws of the state and practice of New York courts.”). These rules also provide clear guidelines for the ethical conduct of the practice of law by firmly establishing, *inter alia*, the existence and boundaries of the attorney-client relationship and the attorney’s duties as an officer of this Court. *Cf. United States v. Singleton*, 107 F.3d 1091, 1102 (4th Cir. 1997) (“As an officer of the court, the lawyer has obligations, including the duty of disclosure, the duty to ask only appropriate questions, and the duty not to suborn perjury, which have not been considered personally binding on the defendant. In addition, the lawyer’s duty of attorney-client confidentiality could be seriously compromised by a system in which the defendant selectively employs his attorney while making his own defense.”). In short, the Local Rules recognize that the practice of law is more than just providing advice and therefore require the practice of law be conducted consistent with certain well-defined and relatively non-burdensome guidelines. Given the compelling aim of the Local Rules, neither would-be counsel nor the defendant has a valid

objection to the application of the rules in this case, even if they operate to bar counsel from legal consultations with the defendant. *See Ford v. Israel*, 701 F.2d 689, 692 (7th Cir. 1983) (“Rules requiring that local counsel appear in all litigation are, so far as we are aware, universal, and their constitutionality was upheld in *Martin v. Walton*, 368 U.S. 25 (1961). . . .”); *Bedrosian*, 518 F.2d at 401 (“While experience in criminal law in other jurisdictions may qualify an attorney to appear *pro hac vice* in a jurisdiction wherein he has never practiced, especially when as here he is required to associate with local counsel familiar with state law and procedure, it does not follow that the court may be compelled to appoint that attorney to serve as assigned counsel.”).

Simply put, if Mr. Freeman wants to represent defendant, he can file a motion to practice *pro hac vice* pursuant to Local Rule 83(D) and enter his appearance. Indeed, by this Court’s Order dated June 17, 2002, he may still do so before June 28, 2002. If, on the other hand, Mr. Freeman is unwilling to accept the responsibility that the Local Rules impose upon any attorney who practices in this District, he has no complaint.

In addition to the Local Rules, the Special Administrative Measures provide an independent and legitimate basis to bar future meetings between the defendant and uncleared counsel. Again, these Special Administrative Measures would not bar a properly cleared attorney from meeting with the defendant, if that attorney were counsel of record in accordance with the Local Rules. However, because Mr. Freeman is not counsel for the defendant, and he is not cleared, under the Court’s protective orders, to review or discuss the discovery materials in this case, he is not permitted blanket access to the prison. Thus, there is no longer any reason to permit visits between Mr. Freeman and the defendant. *Cf. United States v. Bin Laden*, 58 F. Supp. 2d 113, 123 (S.D.N.Y. 1999) (“[T]here is plainly a substantial governmental objective in

guarding against the unauthorized disclosure of classified information, this interest manifestly outweighs counsel's desire not to disclose personal information needed to conduct a thorough background check, and the clearance procedure presents a reasonable method for effecting the Government's legitimate goals."); *United States v. Musa*, 833 F. Supp. 752, 756 (E.D. Mo. 1993) ("nothing in [the 6th Amendment] guaranteed a defendant an unlimited right to the paralegals, secretaries, or translators of his own choosing.").

Moreover, it is not enough to say, as Mr. Freeman does, that he already has been cleared to visit the defendant because the prior clearance was given only for the limited purpose of permitting Mr. Freeman to discuss his possible representation of the defendant. Indeed, this limited clearance was given to several other individuals, some of whom likely would have had a conflict had they represented Mr. Moussaoui. Thus, the limited clearance provided to Mr. Freeman should not be transformed into carte blanche access to the defendant for any purpose, including legal consultation.

It is by Mr. Freeman's own volition that he should not be permitted to serve as a "legal advisor" to the defendant in this case. The Local Rules and Special Administrative Measures operate to protect valid public interests and they are rules that Mr. Freeman, if he chose to, could comply with relatively easily. Yet, neither he nor the defendant has tendered any reason why these rules should not apply in this case, and therefore Mr. Freeman's participation in this case as

an attorney should cease if he is unwilling to follow the Local Rules or the other orders of this Court.

Respectfully Submitted,

PAUL J. McNULTY
UNITED STATES ATTORNEY

By: /s/
Kenneth M. Karas
Robert A. Spencer
David J. Novak
Assistant United States Attorneys

CERTIFICATE OF SERVICE

I certify that on June 27, 2002, a copy of the attached Government's Response was provided to the defendant and sent via regular mail and facsimile to defense counsel below:

Frank Dunham, Jr., Esq.
Office of the Federal Public Defender
1650 King Street
Suite 500
Alexandria, Virginia 22314
Facsimile: (703) 600-0880

Gerald Zerkin, Esquire
Assistant Public Defender
One Capital Square, 11th Floor
830 East Main Street
Richmond, Virginia 23219
Facsimile: (804) 648-5033

Alan Yamamoto, Esquire
108 North Alfred Street
First Floor
Alexandria, Virginia 22314
Facsimile: (703) 684-9700

Charles Freeman, Esquire
P.O. Box 52818
Sam Houston Station
Houston, Texas 77052-2818
Facsimile: (713) ??

_ /s/ _____
Kenneth M. Karas
Assistant United States Attorney